IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Crl.MC.No. 3299 of 2007()

CMP.5190/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA

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PETITIONER:

ING VYSYA BANK LTD.,
RETAIL BANKING DIVISION, SHEMA BUILDING,
REVIPURAM, PIN-682016, REP. BY POWER OF ATTORNEY
HOLDER SRI.VENUGOPALAN C.

BY ADV. SRI.P.T.JOSE

RESPONDENTS:

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1. BYJU V.M., S/O. MATHEW,
VATTAKKUNNEL HOUSE, KUNTHALAMPARA, KATTAPPANA,
IDUKKI, PIN-685508.

2. RUBY ABRAHAM, S/O. ABRAHAM,
VEZHAMBATHOTTAM HOUSE, KUNTHALAMPARA KARA,
KATTAPPANA, PIN-685508.

3. STATE OF KERALA,
REP. BY THE S.I. OF POLICE, KATTAPPANA.

BY ADV. SRI.S.SACHITHANANDA PAI
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3299 of 2007

Dated this the 5th day of November 2007

O R D E R

The petitioner has come to this court complaining about Annexure A10 order under which the vehicle in question has been directed to be released to the second respondent herein.

2. The first respondent is the registered owner. The second respondent claims possession of the vehicle in question - a stage carriage bus, as per an agreement dated 15/10/2006 with the first respondent. The registered owner had availed a loan from the petitioner herein. The second respondent does not dispute the liability to pay the amounts due under the said agreement. The second respondent has a case that all amounts due under the agreement have been paid. But the vehicle was allegedly taken away forcibly from the possession of the second respondent herein. Later, the second respondent approached the learned Magistrate for release of the vehicle. By the impugned order dated 24/10/2007, the vehicle was directed to be released to the second respondent herein subject to

conditions. The petitioner herein went before the learned Magistrate on 25/10/2007 seeking release of the vehicle to the petitioner. By then, the impugned order had already been passed on 24/10/2007. The petitioner claims to be aggrieved by the impugned order.

3. The second respondent has entered appearance through counsel. The second respondent has no objection whatsoever against setting aside the impugned order. The learned counsel for the second respondent only prays that the learned Magistrate may be directed to consider the application for release of the vehicle filed (or to be filed) by him and also the petitioner herein expeditiously. I reckon the request of the second respondent to be absolutely justified. I am satisfied that the impugned order can be set aside and appropriate direction can be issued.

4. In the result:

a) This petition is allowed. The impugned order directing release of the vehicle to the second respondent herein is set aside.

b) The learned Magistrate is requested to consider the

second respondent's application for release of the vehicle afresh.

5. If the petitioner wants to stake any claim for release of the vehicle, the same shall be filed forthwith - within a period of three days from this date before the learned Magistrate. The learned Magistrate must consider both applications, after hearing the submissions, if any, of the petitioner and the second respondent and appropriate orders must be passed as expeditiously as possible.

6. The learned Magistrate shall call the petition again on 09/11/2007. Both parties without waiting for any further notice from that court must appear before that court on 9/11/2007 and make their submissions. As expeditiously thereafter, as possible, order shall be passed by the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner and to the learned counsel for the second respondent. The second respondent shall produce the order before the learned Magistrate on or before 9/11/2007.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007